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ANNEX

A CONSTITUTIONAL FRAMEWORK FOR A SPECIAL AUTONOMY FOR EAST TIMOR

PART ONE

RESPECTIVE AREAS OF COMPETENCE

Chapter I

The Indonesian (Central) Government

Section A: Foreign Relations

Article 1

The Indonesian Government, hereinafter, referred to as the Central Government, shall have responsibility for and competence over the foreign affairs of the Special Autonomous Region of East Timor (SARET). It shall consult the Government of the SARET for the purpose of taking into account the views of the Government of the SARET on issues of particular relevance to the SARET

Section B : Defence

Article 2

The Central Government shall have responsibility for and competence over the external defence of the SARET, as part of the territory of the unitary state of the Republic of Indonesia.

Article 3

For such purpose, the Indonesian armed forces (Tentara Nasional Indonesia - TNI) shall maintain a military presence in the SARET in the context of defending and safeguarding the external security of the SARET

Article 4

In the event of an external armed attack, or an imminent threat of such an attack, the Indonesian armed forces (TNI) may be deployed outside their bases or normal areas of operation in the exercise of its duty to defend the sovereignty and territorial integrity of the unitary state of the Republic of Indonesia.

Section C: Economic and Fiscal Policies

Article 5

The SARET shall be a part of the Indonesian monetary and customs unit subject to those national monetary and fiscal policies, and laws and regulations of Indonesia which are consistent with this Agreement.

Article 6

The Central Government will continue its assistance to the development of the SARET.

Article 7

The Central Government shall have exclusive competence over national taxation and the Government of the SARET shall have exclusive competence over local taxation, in conformity with the existing laws and regulations.

Article 8

Natural resources in the SARET, except those considered to be strategic or vital under national laws, shall be under the control of the Government of the SARET. In the exploitation of all natural resources, the Central Government and the Government of the SARET may establish cooperative or joint undertakings.

Article 9.

For the purposes of its overall development, the Government of the SARET may receive foreign assistance which is to be channelled through the Central Government.

Article 10

The Government of the SARET can enter into domestic loans to finance part of its budget, with the consent of the Regional Council of People's Representatives of the SARET.

Section D : Continuity of Indonesian Laws

Article 11

Indonesian laws in force upon the date of the entry into force of this Agreement that fall within the competence of the Central Government, as defined in this Chapter, shall remain in force for the SARET.

Chapter II

The Government of the Special Autonomous Region of East Timor

Article 12

All matters, other than those listed within Chapter I of Part One, and as provided in other relevant provisions of this Agreement, shall be within the responsibility and competence of the Government of the SARET.

Article 13

The powers of the Government of the SARET shall be exercised in accordance with the provisions of this Agreement, and also in accordance with the Constitution of the Republic of Indonesia.

Article 14

The Government of the SARET shall not:

a. restrict the rights of workers as recognized by law; and

b reserve any occupation or public office solely to persons with East Timorese identity.

Chapter III

Jurisdictions of the Central Government and the Government of the SARET

Article 15

The Government of the SARET shall have jurisdiction over crimes committed in the SARET with the exception of those related to treason and terrorism, narcotics and other international crimes, over which Indonesian laws and jurisdiction shall prevail.

PART TWO

EAST TIMORESE IDENTITY AND IMMIGRATION

Chapter I

Definition

Article 16

Any person,

a. who was a lawful resident of East Timor prior to or in December 1975,

b. whose father, mother, grandfather, or grandmother was a lawful resident of East Timor prior to or in December 1975, or

c. who has permanently resided in East Timor for a period of at least five years at the time of the entry into force of this Agreement,

shall be considered to have East Timorese identity, irrespective of nationality, and have the right to permanent domicile in East Timor.

Chapter II

Acquisition of Identity and Immigration

Article 17

The Government of the SARET shall have the exclusive right to establish the rules and procedures under which persons who do not have East Timorese identity may acquire such identity.

Article 18

The Central Government shall have the power to apply immigration controls on entry into and departure from the SARET of persons who are neither citizens of Indonesia nor have East Timorese identity, pursuant to its authority under Article 1 of this Agreement.

Article 19

The SARET shall have the authority to issue documents to individuals in order to identify those who have East Timorese identity.

Chapter III

Symbols of Identity

Article 20

The SARET may adopt its own coat of arms. The Indonesian national flag and Indonesian national anthem "Indonesia Raya" shall be flown and performed at such places and occasions as required by the existing laws and practices.

Article 21

The SARET may participate under its own name, with the concurrence of the Central Government, in international cultural and sports events in which other non-state entities participate.

PART THREE

POWERS AND INSTITUTIONS OF THE SARET

Chapter I

Legislative Powers and Institutions of the SARET

Article 22

The legislative power of the SARET shall extend to all matters not within the jurisdiction of the Central Government, as defined in Chapter I of Part One. This power

shall include, the establishment of political, economic, and social policies in the SARET; cultural and educational matters; designation of a second language or languages in addition to the official language, Bahasa Indonesia; the establishment of courts of first instance pursuant to Article 40; rules of family law and succession; and public order, including the creation of an East Timor police force that shall be responsible for enforcement of all laws and regulations in the SARET, in accordance with the laws and regulations of the Republic of Indonesia.

Article 23

The SARET may adopt legislations regulating or restricting the ownership of property by persons who do not have East Timorese identity without contravening legitimately acquired rights.

Article 24

The SARET shall have the authority to establish a Land Claims Commission, whose members shall be selected in accordance with the manner prescribed for the selection of judges in Article 42, which shall make recommendations in order to decide on all disputed claims to title over real property through the court.

Article 25

The Regional Council of People's Representatives of the SARET

1. The legislative power of the SARET shall be vested in and exercised by the Regional Council of People's Representatives of the SARET, elected by persons of East Timorese identity as defined in Part Two, on the basis of universal adult suffrage. The implementation of elections for the Regional Council of People's Representatives of the SARET shall be further determined by the SARET and need not coincide with national elections.

2. Members of the Regional Council of People's Representatives of the SARET shall be persons who fulfill the eligibility requirements for membership. No racial, ethnic, religious, nationality, or other requirement unrelated to the exercise of the functions of a member of the Council shall be imposed.

3. Members of the Regional Council of People's Representatives of the SARET shall be immune from legal action in respect of their oral or written statements or actions relating to the business of the Council, or made or taken in their capacity as members of the Council.

Chapter II

Executive Powers and Institutions of the Government of the SARET

Article 26

The executive power of the Government of the SARET shall be exercised by a Governor who will be assisted by an Advisory Board whose members shall be appointed by the Governor upon the recommendation of the Regional Council of People's Representatives of the SARET.

Article 27

The Government of the SARET shall have the competence to design, guide and implement policies and programmes and issue executive decrees and regulations within the scope of the laws of the SARET. It shall also be responsible for ensuring that all laws and regulations applicable in the SARET are faithfully administered and enforced.

Article 28

The Governor of the SARET shall be elected by a majority of the members of the Regional Council of People's Representatives of the SARET and responsible to it. The list of candidates for the post of Governor of the SARET shall first be consulted with and approved by the President of the Republic of Indonesia.

Article 29

The Governor-elect shall be formally confirmed to the post by the President of the Republic of Indonesia and shall be formally invested before the Regional Council of People's Representatives of the SARET.

Article 30

The Governor shall designate officials who shall be in charge of the executive services and other bodies of the SARET.

Article 31

The Government of the SARET shall have responsibility for the maintenance of public order in the SARET and for the administration and enforcement of all laws and regulations within the SARET.

Article 32

There shall be a Police Force of the SARET which shall be organized in accordance with regional laws.

Article 33

The Police Force of the SARET shall be subject to the authority and control of the Government of the SARET.

Article 34

Members of the Police Force of the SARET shall be recruited, without discrimination on racial, ethnic, or religious grounds.

Article 35

The primary functions of the Police Force of the SARET shall be :

a. to preserve internal peace and good order in East Timor; and
b. to maintain and, as necessary, enforce the law in an impartial and objective manner.

Chapter III

Judicial Powers and Institutions of the SARET

Article 36

The judicial power of the SARET shall be vested in and exercised by an independent judiciary.

Article 37

The judiciary of the SARET shall have jurisdiction over all civil, criminal, administrative, and other matters that fall within the competence of the SARET.

Article 38

In any civil suit with the consent of all of the parties to such suit, the judiciary can apply any customary law applicable between such parties and recognized as such by the judiciary of the SARET

Article 39

The judiciary of the SARET shall consist of such Courts of First Instance as may be established by regulations of the SARET, a Court of Appeal, a Court of Final Appeal and a Public Prosecutor.

Article 40

Courts of First Instance

1. There shall be Courts of First Instance in the SARET for the administration of justice. Such courts shall have such original civil, criminal and administrative jurisdiction as may be necessary to administer the laws in force in the SARET.

2. The Courts of First Instance shall consist of such judges as may be required for the proper administration of justice.

Article 41

The Court of Appeal

1. There shall be a Court of Appeal, consisting of a President and as many other judges as may be required, which shall have appellate jurisdiction from judgments of the Courts of First Instance.

2. The Court of Appeal also shall have original and appellate jurisdiction over all cases that concern the interpretation of Indonesian laws applicable to the SARET or the interpretation of Parts One, Five and Six of this Agreement.

3. The President of the Court of Appeal shall be appointed by the Chief Justice of the Supreme Court of the Republic of Indonesia, upon the recommendation of an independent Judicial Commission, which will be established in accordance with procedures adopted by the Regional Council of People's Representatives of the SARET.

Article 42

Judges of the Courts of First Instance and the Court of Appeal shall be selected by the Judicial Commission.

Article 43

The Judicial Commission also shall be responsible for disciplinary and other issues related to judicial performance, as specified by the Regional Council of People's Representatives of the SARET.

Article 44

Court of Final Appeal

1. The court of final appeal of the SARET shall be the Supreme Court of Indonesia.

2. An appeal shall lie from decisions of the Court of Appeal to the Supreme Court of Indonesia which is the right of the disputing parties:

   a. in all cases concerning laws and regulations of Indonesia applicable in the SARET;

   b. in all cases concerning the interpretation of this Agreement, provided that the Supreme Court shall establish a special chamber to hear such cases composed of an odd number of judges drawn from the Supreme Court of Indonesia and ad hoc judges drawn from the East Timor Court of Appeal of the SARET.

3. An appeal shall lie from decisions of the Court of Appeal to the Supreme Court of Indonesia with the leave of the Court of Appeal :

   a. in all cases concerning the interpretation of the regional laws and regulations of the SARET;

   b. on questions of law arising in criminal and civil cases.

Article 45

The Public Prosecutor shall be appointed, discharged and shall have such duties, as provided for by the regional laws and regulations of the SARET.

PART FOUR
PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 46

The Central Government and the Government of the SARET shall promote, protect and respect human rights and fundamental freedoms without discrimination of any kind, as set forth, inter alia, in the Universal Declaration of Human Rights, the 1993 Vienna Declaration on Human Rights and the Decree of The People's Consultative Assembly No. XVII/MPR/1998 Concerning Human Rights. These rights and fundamental freedoms include : :

a. freedom of thought, conscience, and religion;

b. the right to life, liberty, and security of person:

c. freedom from torture, violence, arbitrary arrest, detention, or exile;

d. the right to a full and fair hearing by an independent and impartial tribunal in the determination of any civil rights or obligations or any criminal charge;

e. freedom of expression in all its forms, association, and peaceful assembly;

f. the right to form political parties specific to East Timor without restrictions of any kind and subject to the provision of Article 57;

g. the right to participate in government without discrimination, through free periodic elections and non-discriminatory access to public service, subject to the provisions of Article 25;

h. the right to participate in Indonesian national political life, including the right to vote in general elections and to be elected as a member of the Indonesian national Parliament or be appointed as a member of the People's Consultative Assembly;

i. the right to participate in Indonesian public and administrative services without discrimination on any grounds;

j. freedom of movement throughout the territory of the Republic of Indonesia;

k. the right of everyone to enjoy and participate in his or her culture;

l. the right to own property and not to be arbitrarily deprived of it;

m. the right to protection for family life, privacy, home and correspondence;

n. the right to education, including, as a minimum, the right to a free primary education for all;

o. the right to an adequate standard of living, subject to available resources and capabilities;

p. the right of women to full and equal participation in political, civil, economic, social, and cultural life;

q. the rights of the child, without discrimination of any kind, as set forth in the UN Convention on the Rights of the Child.

PART FIVE
RELATIONSHIP BETWEEN THE CENTRAL GOVERNMENT AND THE GOVERNMENT OF THE SARET

Article 47

The Central Government shall take into account the views of the Government of the SARET in the adoption of laws, regulations and policies within the competence of the Central Government that may have a direct effect in the SARET.

Article 48

In the implementation of those laws, regulations or policies of the Central Government that are applicable in the SARET, as set forth in Chapter I of Part One, the Government of the SARET shall coordinate, with the relevant offices of the Central Government.

Article 49

The Central Government shall appoint a senior official, who shall reside in Dili, to exercise the competences of the Central Government in the SARET, and to coordinate and supervise such Central Government officials in the SARET as may be necessary to assist the Government of the SARET in the implementation of laws.

regulations and policies within the competence of the Central Government, as set forth in Chapter I of Part One, and to perform the functions provided for in Article 50 below.

Article 50

The Central Government and the Government of the SARET may create bodies or other arrangements to facilitate consultation, cooperation and coordination on such matters as police matters, tourism, transportation, telecommunications, education, health and the environment.

Article 51

In the performance of its duties, the Police Force of the SARET shall consult and cooperate with the Central Government authorities with respect to the enforcement of Indonesian national laws in the SARET.

Article 52

The Police Force of the SARET shall take the necessary action, at the request of the Indonesian National Police to apprehend persons in the SARET accused of having committed crimes outside the SARET.

Article 53

The Indonesian National Police shall take the necessary action, in cooperation with the Police Force of the SARET, to apprehend persons outside the SARET accused of having committed crimes in the SARET.

Article 54

In exceptional cases the Indonesian National Police will assist the Police Force of the SARET in the performance of its functions.

PART SIX
RELATIONSHIPS BETWEEN THE SPECIAL AUTONOMOUS REGION OF EAST TIMOR AND OTHER ENTITIES

Article 55

Without prejudice to the responsibility and competence of the Central Government, as set forth in Article 1,

a. the Government of the SARET may, with the consent of the Central Government enter into agreements and engage in social, cultural, trade, environmental, transportation, scientific, technical, tourism, and sports activities with regional governments / cities of foreign countries and international organizations;

b. the Government of the SARET may seek and obtain international development assistance with the consent of the Central Government; and

c. foreign governments may open, with the consent of the Central Government, non-diplomatic representative offices in the SARET.

PART SEVEN
THE UNITED NATIONS

Article 56

The United Nations Secretary-General shall have the responsibility and authority to monitor and verify compliance with this Agreement. This authority includes monitoring the election of members of the Regional Council of People's Representatives of the SARET and verifying that such elections are free and fair. For this purpose, the United Nations Secretary-General may establish in the SARET such offices as he deems necessary which would operate within a specific time-frame to be further agreed upon between the United Nations and the Indonesian Government.

PART EIGHT
GENERAL PROVISION

Article 57

The special autonomy for East Timor as provided in this Agreement is granted within the framework of the Constitution of the Republic of Indonesia.

PART NINE
BASIC LAW OF THE SARET

Article 58

The SARET shall be governed by a basic law, enacted by the first elected Regional Council of People's Representatives of the SARET and which shall be in accordance with the provisions of this Agreement.

PART TEN

TRANSITIONAL PROVISIONS

Article 59

The following provisions shall be in effect during the time between the entry into force of this agreement and the election and assumption of office by the the Regional Council of People's Representatives of the SARET and the Government of the SARET:

a. There shall be a broadly representative Transitional Council, composed of no more than 25 persons of East Timorese identity, whose members shall be appointed by the United Nations Secretary-General in consultation with relevant individuals and groups within the SARET and with the Government of Indonesia.

b. The Transitional Council can enact the regional laws and regulations for the election of the first Regional Council of People's Representatives of the SARET and for such subjects as may be agreed upon by the parties to this Agreement, in accordance with existing laws, while maintaining the smooth functioning of the general administration, public services and public order

c. The Secretary-General of the United Nations, the Government of Indonesia and the Transitional Council shall engage in consultations to ensure the effective implementation of this Agreement, and the smooth and peaceful process of transition in the SARET.

d The Secretary-General of the United Nations, the Government of Indonesia and the Transitional Council shall establish a working group that will address transitional security arrangements.